

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL UNDER SECTION 109 No 29 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

M/S.JIVAN NAGJI & SONS

Versus

M/S.JIVAN NAGJI & CO.

Appearance:

MR YJ TRIVEDI for Petitioner
MR VIJAY H PATEL for Respondent No. 1
Respondent No. 2 is served

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 23/07/98

ORAL JUDGEMENT

1. This application is filed against the order of the Assistant Registrar of Trade Mark dated 1st September, 1992, rejecting the appellant application for registering the word 'JIVAN NAGJI' as trade mark of its proprietorship in respect of weighing scales, weighing instruments, weighing apparatus and parts thereof in class - 9 of the IVth Schedule on the basis of a user of

the said mark since 1952. The application was registered at Sr. No. 412099 dated 19th October, 1983. The application was not accepted for the registration in Part-'A' of the list. However, the impugned mark was accepted for registration in Part - 'B' of the Register and advertisement under Sec. 21 was issued in Trade Marks Journal No. 905 dated 16th February, 1987 at page 94. The applicant is a registered firm carrying on business in the name and style of JIVAN NAGJI & SONS. The respondent is also carrying on business of manufacturing and trading of similar commodities, namely, weights, measures, weighing scales, instruments, apparatus and parts thereof in the name and style of JIVAN NAGJI & CO. Respondent filed the notice of opposition dated 12th May, 1987 in response to the advertisement referred to above. Accepting the opposition, application of the appellant was rejected on 1st September, 1992. Hence this Appeal.

2. Fact as emerges from the order of the Assistant Registrar and are not in dispute are that the appellant is using the brand name 3 Keys on their goods. The actual words which have been put on the goods manufactured by them along with brand name '3 Keys' is the full name of the firm "JIVAN NAGJI & SONS ". But the mark applied for consist of two words "JIVAN NAGJI" only. The mark '3 Keys, is registered under No.174302. In this premises, it was concluded by learned Asst. Registrar that the distinctive trade mark, which is associated with the goods manufactured by the applicant and used by it is the '3 Keys' and not the word 'JIVAN NAGJI' sought to be registered. The writings of 'JIVAN NAGJI & SONS' the firm name on the articles manufactured by it, merely denotes the origin or ownership of the goods but is not used as distinctive mark associated with the goods in the market. Goods are marketed with distinctive mark of '3 Keys,' thus, associating the goods with the said brand. As the words applied for registration as trade mark denoting simple trade name is not projected in any specific or particular manner, the same do not call for consideration under Section 9 (a) and the said words by themselves have been not used as essential feature of the mark so as to be impressed with character of distinctiveness on the basis of long user in terms of Section 9(5). More over, the application has not been made for registering the full name of the trading style, namely 'JIVAN NAGJI & SONS' but only for 'JIVAN NAGJI'. The mark applied for as such was not in use for long either. Mark applied for consists of part of entire trade name. No benefit can be derived from the provision of Section 9(5)(b) to consider 'JIVAN NAGJI' as words

denoting individual name of the firm having acquired any distinctiveness by user. On this ground the application has been rejected.

3. Having heard learned counsel for the appellant and perused the order and material placed before me, I am in agreement with the reasons stated by the Assistant Registrar in support of his order. It has to be noticed that brand name '3 Keys' is admittedly used by the applicants since long in relation to the commodities in question. The registration for that brand has also been secured by it under No. 174302. Had the applicant ever used the word 'JIVAN NAGJI' as distinctive mark associating them with its goods, there was no reason that the applicant would not have secured registration of words 'JIVAN NAGJI' along with '3 Keys' which are used simultaneously on the articles as part of the trade mark used by the applicant. The very fact that while the applicant was selling his goods under '3 Keys' brand by printing side by side, the name of its firm in full, clearly suggests that 'JIVAN NAGJI & SONS' had not been used or styled to lead such distinctiveness to acquire the essential character of a trade mark which could be registered, notwithstanding prohibition under Sec. 9(1)(d). This is the only additional reason which emerges from the facts in support of other reasons with which I have expressed my concurrence.

4. Appeal, therefore, fails and is dismissed. There shall be no order as to costs.

p.n.nair